

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EL QUZAYD BEY,
Plaintiff,

v.

JERRY BROWN,
Defendant.

Case No. 18-cv-04945-PJH

**ORDER DISMISSING CASE WITHOUT
PREJUDICE**

Re: Dkt. Nos. 10, 12

On August 15, 2018, pro se plaintiff El QuZayd Bey filed this action against Governor Jerry Brown. Dkt. 1. The action is captioned as an “Affidavit to Correct the Record; Declaration of Nationality.” Id. On August 17, 2018, Magistrate Judge Beeler granted plaintiff’s IFP motion. Dkt. 4. On August 31, 2018, plaintiff declined magistrate judge jurisdiction. Dkt. 6. On September 5, 2018, Judge Beeler entered an order dismissing the case with leave to amend pursuant to IFP review because “the complaint fails to state a claim. Mr. Bey does not identify a specific cause of action in his filing, nor does he include any facts that would imply a legal cause of action.” Dkt. 7 at 2. The court reasoned that Bey “cites statutes that do not provide a private right of action” and “does not allege facts describing events that might state a claim in his complaint.” Id. at 3. Further, “[i]t is unclear from the information in his complaint what remedy he seeks.” Id.

That order allowed Bey to file a new complaint by September 25, 2018. Id. at 4. The order also informed Bey that he “may also dismiss his case voluntarily by filing a one-page notice of voluntary dismissal, which will operate as a dismissal without

1 prejudice, thereby allowing Mr. Bey to file a complaint later if she [sic] can cure the
2 complaint's deficiencies." Id. Alternatively, Judge Beeler explained that "[i]f Mr. Bey does
3 not file a first amended complaint by September 25, 2018, or ask for an extension of time
4 to do so, the court will close the case without prejudice to Mr. Bey's timely refiling if he
5 can cure the complaint's deficiencies." Id.

6 On September 25, 2018, Bey sought an extension to amend his complaint. Dkt. 8.
7 Judge Beeler granted that motion and extended the deadline for Bey to file a new
8 complaint to October 10, 2018. Dkt. 9. To date, Bey has not filed an amended
9 complaint.

10 On October 18, 2018, Judge Beeler issued an order reassigning the case to a
11 district judge with a recommendation to dismiss the complaint with prejudice. Dkt. 10.
12 Judge Beeler reasoned that Bey failed to state a claim for the reasons described in her
13 September 5, 2018 order and that plaintiff had failed to file an amended complaint by the
14 deadline. Dkt. 10.

15 On November 2, 2018, plaintiff filed objections to the Report and
16 Recommendation. Dkt. 12. Bey explained that he attempted to move the court to take
17 the case off the court's calendar or voluntarily dismiss the action without prejudice in an
18 October 9, 2018 letter. The docket does not reflect Bey's October 9, 2018 letter.
19 However, Bey attached the October 9 letter to his November 2 filing, and he asked that
20 the court accept that letter and he "be permitted to move forward without prejudice." Id.
21 at 2. The October 9, 2018 letter seeks to take the case off the court's calendar (which
22 the court interprets as a request to stay the case), and in the alternative to voluntarily
23 dismiss the case without prejudice. The court declines to stay the action.

24 Given that Magistrate Judge Beeler informed Bey that he could have voluntarily
25 dismissed his case without prejudice rather than amend his complaint, and given Bey's
26 letter seeking to voluntarily dismiss the case without prejudice dated before the expiration
27 of the deadline to amend his complaint, the court hereby GRANTS Bey's request and

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DISMISSES the action WITHOUT PREJUDICE.

IT IS SO ORDERED.

Dated: January 10, 2019



PHYLLIS J. HAMILTON
United States District Judge